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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

SENATE BILL NO. 342

(By Senator Minard)

PASSED April 9, 1993
In Effect 90 days from Passage

E N R O L L E D

Senate Bill No. 342

(BY SENATOR MINARD)

[Passed April 9, 1993; in effect ninety days from passage.]

AN ACT to amend article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a; and to amend and reenact section nine of said article; and to amend and reenact section two, article three of said chapter, all relating to making orders of the commissioner of banking and West Virginia board of banking public records.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a; that section nine of said article be amended and reenacted; and that section two, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4a. Orders of the commissioner of banking to be made public.

- 1 Any order entered by the commissioner of banking
- 2 against any person:

3 (1) To cease violating any provision or provisions of
4 this chapter or other applicable law or rule and
5 regulation promulgated or order issued thereunder;

6 (2) To cease engaging in any unsound practice or
7 procedure which may detrimentally affect any finan-
8 cial institution;

9 (3) To revoke the certificate of authority, permit or
10 license of any financial institution; and

11 (4) To take such other action as the commissioner of
12 banking may deem necessary to enforce and adminis-
13 ter the provisions of this chapter and all other laws
14 which the commissioner is empowered to enforce is a
15 matter of public record.

**§31A-2-9. Correction of violations of law, irregularities and
unsound practices; disposition of doubtful
assets and past-due obligations; stockholders'
meetings.**

1 Whenever it appears that any law, rule and regula-
2 tion or order applicable to any financial institution is
3 being violated, or that any irregularities exist or
4 unsound practices or procedures are being engaged in,
5 it shall be the duty of the commissioner of banking to
6 promptly call the same to the attention of the officers
7 and directors of the financial institution offending and
8 to demand that the same be promptly corrected; and
9 he or she may require a sworn statement from the
10 said officers and directors covering the matter of all
11 such violations and of all such irregularities, unsound
12 practices or procedures to be furnished to him or her
13 as often as he or she may deem necessary, until he or
14 she is satisfied that such violations have ceased and
15 that the irregularities, unsound practices or proce-
16 dures complained of have been corrected. Such reports
17 shall not be made public, except as necessary as part
18 of any order or other enforcement action or proceeding.

19 If any such institution owns any asset, the value of
20 which, in the judgment of the commissioner of bank-
21 ing, is questionable, or owns past-due obligations, the
22 commissioner of banking may require the assets of

23 doubtful value to be at once converted into money or
24 charged off of the books of the financial institution at
25 the expiration of three months from the date of such
26 order; or require legal proceedings to be at once
27 instituted for the collection of any past-due obligations
28 to the financial institution or that they be charged off.

29 Upon the written notice of the commissioner of
30 banking, the directors of any financial institution shall
31 call a general meeting of the stockholders thereof to
32 consider such matters as the commissioner may
33 prescribe. Notice of such meeting shall be given in
34 accordance with applicable statutes and the bylaws of
35 the financial institution. The expense of such meeting
36 and notice thereof shall be borne by the financial
37 institution whose stockholders are so required to
38 convene.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

1 (a) In addition to other powers conferred by this
2 chapter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any
5 provision of this article, such rules to be promulgated
6 in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code;

8 (3) Advise the commissioner in all matters within
9 his jurisdiction;

10 (4) Study the organization, programs and services of
11 financial institutions and the laws relating thereto in
12 this state and in other jurisdictions, and to report and
13 recommend to the governor and the Legislature all
14 such changes and amendments in laws, policies and
15 procedures relating thereto as may be by it deemed
16 proper; and

17 (5) Grant permission and authority to a financial
18 institution:

19 (A) To participate in a public agency hereafter

20 created under the laws of this state or of the United
21 States, the purpose of which is to afford advantages or
22 safeguards to financial institutions or to depositors
23 therein, and to comply with all lawful requirements
24 and conditions imposed upon such participants;

25 (B) To engage in any financial institution activity,
26 services, procedures and practices in which financial
27 institutions of the same type subject to the jurisdiction
28 of the federal government may hereafter be autho-
29 rized by federal laws, rules or regulations to engage,
30 notwithstanding any contrary provision of this code;
31 and

32 (C) To pay interest on demand deposits of the United
33 States or any agency thereof, if the payment of such
34 interest shall be permitted under any applicable
35 federal law, rule or regulation.

36 Any permission and authority granted by the board
37 pursuant to this subdivision shall cease and terminate
38 upon the adjournment of the next regular session of
39 the Legislature, unless the Legislature shall at such
40 session enact legislation authorizing the financial
41 institution participation, activity, services and proce-
42 dures or payment of interest with respect to which
43 such permission and authority were granted, in which
44 event such permission and authority shall continue in
45 effect until the effective date of such legislation.

46 (b) The board shall further have the power, by
47 entering appropriate orders, to:

48 (1) Restrict the withdrawal of deposits from any
49 financial institution when, in the judgment of the
50 board, extraordinary circumstances make such restric-
51 tions necessary for the protection of creditors of and
52 depositors in the affected institution;

53 (2) Compel the holder of shares in any corporate
54 financial institution to refrain from voting said shares
55 on any matter when, in the judgment of the board,
56 such order is necessary to protect the institution
57 against reckless, incompetent or careless management,
58 to safeguard funds of depositors in the institution or to

59 prevent willful violation of any applicable law or of
60 any rule and regulation or order issued thereunder. In
61 such a case the shares of such a holder shall not be
62 counted in determining the existence of a quorum or
63 a percentage of the outstanding shares necessary to
64 take any corporate action;

65 (3) Approve or disapprove applications to incorporate
66 and organize state banking institutions in accordance
67 with the provisions of sections six and seven, article
68 four of this chapter;

69 (4) Approve or disapprove applications to incorporate
70 and organize state-chartered bankers' banks in accor-
71 dance with the provisions of sections six and seven,
72 article four of this chapter;

73 (5) Exempt a bankers' bank from any provision of
74 this chapter if the board finds that such provision is
75 inconsistent with the purpose for which a bankers'
76 bank is incorporated and organized and that the
77 welfare of the public or any banking institution or
78 other financial institution would not be jeopardized
79 thereby;

80 (6) Revoke the certificate of authority, permit,
81 certificate or license of any state banking institution to
82 engage in business in this state if such institution shall
83 fail or refuse to comply with any order of the commis-
84 sioner entered pursuant to the provisions of paragraph
85 (A) or (B), subdivision (14), subsection (c), section four,
86 article two of this chapter, or at the board's election to
87 direct the commissioner to apply to any court having
88 jurisdiction for a prohibitory or mandatory injunction
89 or other appropriate remedy to compel obedience to
90 such order;

91 (7) Suspend or remove a director, officer or
92 employee of any financial institution who is or
93 becomes ineligible to hold such position under any
94 provision of law or rule and regulation or order, or
95 who willfully disregards or fails to comply with any
96 order of the board or commissioner made and entered
97 in accordance with the provisions of this chapter or
98 who is dishonest or grossly incompetent in the conduct

99 of financial institution business;

100 (8) To receive from state banking institutions appli-
101 cations to establish branch banks by the purchase of
102 the business and assets and assumption of the liabili-
103 ties of, or merger or consolidation with, another
104 banking institution, or by the construction, lease or
105 acquisition of branch bank facilities in an unbanked
106 area; examine and investigate such applications, to
107 hold hearings thereon, and to approve or disapprove
108 such applications, all in accordance with section
109 twelve, article eight of this chapter;

110 (9) Approve or disapprove the application of any
111 state bank to purchase the business and assets and
112 assume the liabilities of, or merge or consolidate with,
113 another state banking institution in accordance with
114 the provisions of section seven, article seven of this
115 chapter;

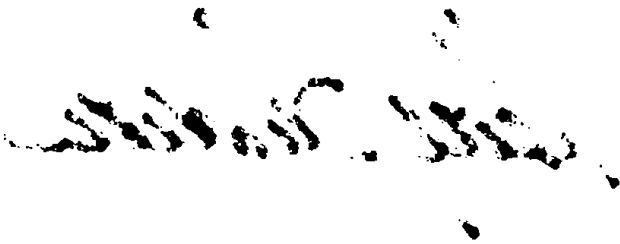
116 (10) Approve or disapprove the application of any
117 state bank to purchase the business and assets and
118 assume the liabilities of a national banking association,
119 or merge or consolidate with a national banking
120 association to form a resulting state bank in accor-
121 dance with the provisions of section seven, article
122 seven of this chapter; and

123 (11) In addition to any authority granted pursuant to
124 section twelve, article eight of this chapter, incident to
125 the approval of an application pursuant to subdivision
126 (7) or (8) of this subsection, permit the bank the
127 application of which is so approved to operate its
128 banking business under its name from the premises of
129 the bank the business and assets of which have been
130 purchased and the liabilities of which have been
131 assumed by such applicant bank or with which such
132 applicant bank has merged or consolidated: *Provided*,
133 That such permission may be granted only if the board
134 has made the findings required by subsection (f),
135 section three of this article and such applicant bank
136 has no common directors or officers nor common
137 ownership of stock exceeding ten percent of total
138 outstanding voting stock with the bank whose business

139 and assets are being purchased and liabilities assumed,
140 or with whom such applicant bank is being merged.

141 (c) No provision of this section shall be construed to
142 alter, reduce or modify the rights of shareholders, or
143 obligations of a banking institution in regard to its
144 shareholders, as set forth in section one hundred
145 seventeen, article one, chapter thirty-one of this code
146 and section seven, article seven of this chapter, and
147 other applicable provisions of this code.

148 (d) Any order entered by the West Virginia board of
149 banking and financial institutions pursuant to this
150 section is a matter of public record.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *21st*
day of *April*, 1993.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/16/93

Time 9:28 am